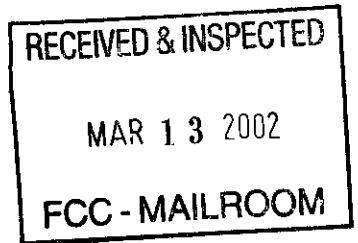




**NEW YORK STATE TELECOMMUNICATIONS
ASSOCIATION, INC.**

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March 12, 2002

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Hancock Tel. Co.

EX-OFFICIO

PATRICIA L. KNAPP
Crown Point Tel. Corp.

William F. Caton
Acting Secretary
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Number Resource Optimization Order*
CC Docket Nos. 99-200, 96-98, and 95-116

Dear Honorable Acting Secretary Caton:

Enclosed please find an Original and 12 copies of the Petition for Partial Reconsideration, for Partial Stay, and, in the Alternative, for Partial Waiver filed by the New York State Telecommunications Association, Inc. (NYSTA).

Kindly date stamp and return one of the copies to NYSTA in the enclosed self-addressed stamped envelope.

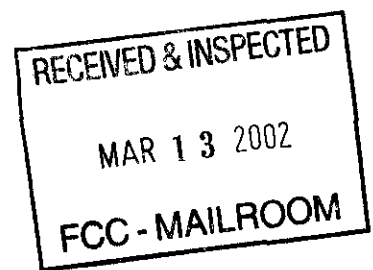
If you have any questions, please contact my office.

Sincerely,

Robert R. Puckett
President

Enclosures

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**



In the Matter of)	
)	
Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications)	
Act of 1996)	CC Docket No. 96-98
)	
Telephone Number Portability)	CC Docket No. 95-116

**PETITION FOR PARTIAL RECONSIDERATION, FOR PARTIAL STAY, AND,
IN THE ALTERNATIVE, FOR PARTIAL WAIVER
BY THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.**

Robert R. Puckett, President
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March 12, 2002

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, DC 20554**

In the Matter of)	
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Numbering Resource Optimization)	CC Docket No. 99-200
)	
Implementation of the Local Competition)	
Provisions of the Telecommunications)	
Act of 1996)	CC Docket No. 96-98
)	
Telephone Number Portability)	CC Docket No. 95-116

**PETITION FOR PARTIAL RECONSIDERATION, FOR PARTIAL STAY, AND,
IN THE ALTERNATIVE, FOR PARTIAL WAIVER
BY THE NEW YORK STATE TELECOMMUNICATIONS ASSOCIATION, INC.**

On December 28, 2001, the Federal Communications Commission (“FCC” or “Commission”) released the text of its *Third Report and Order and Second Order on Reconsideration* in the above-named proceeding.¹ The relevant portions of this decision will become effective on March 14, 2002.²

¹ *In the Matter of Numbering Resource Optimization, Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, and Telephone Number Portability*, CC Docket Nos. 99-200, 96-98, and 95-116, FCC 01-362 (released December 28, 2001). (“*December 28, 2001 Order*”) An *Errata* was issued in this proceeding on February 8, 2002 which has no bearing on the arguments contained within.

² 67 *Fed. Reg.* 6431 (February 12, 2002).

SUMMARY

The New York State Telecommunications Association, Inc. (“NYSTA”) takes issue with the “clarification” regarding the requirement that all non-exempt carriers in the top 100 Metropolitan Statistical Areas (“MSAs”) must be local number portability (“LNP”) capable and participate in thousands block number pooling within six months of the *Order*’s effective date, March 14, 2002.³ NYSTA believes such a requirement is onerous for rural carriers, unlawful, and contrary to the public interest.

NYSTA hereby seeks reconsideration of this determination and a stay of the effectiveness of this requirement pending resolution of this Petition, pursuant to 47 CFR § 1.429. In the alternative, NYSTA respectfully requests that the applicability of this requirement be waived for the affected carriers in New York State for good cause shown, pursuant to 47 CFR § 1.3.⁴

STATEMENT OF INTEREST

NYSTA is a non-profit association incorporated in 1921 whose membership includes all 40 of the incumbent local exchange carriers operating in New York State, including rural carriers offering service in five of the top 100 MSAs in the United States. From time to time, NYSTA advocates positions on behalf of our membership to seek resolution of regulatory issues on their behalf. According to our understanding of the boundaries of the top 100 MSAs, 10 of our rural carrier members would be directly affected by this requirement. We are, accordingly, seeking relief on their behalf.

³ *December 28, 2001 Order*, at p. 55.

⁴ A list of affected companies in New York State appears as Attachment A.

PARAMETERS OF THE ISSUE

The *December 28, 2001 Order* states in no uncertain terms that “we give non-compliant carriers six months from the effective date of this order to become LNP capable in the top 100 MSAs.”⁵ It also reiterated the finding that the only carriers exempt from the pooling requirement are paging carriers and carriers outside the largest 100 MSAs that have not received a request to deploy LNP from a competing carrier.⁶

The top 100 MSAs appear as Appendix D to the *December 28, 2001 Order* and include the following metropolitan areas within New York State: New York, Buffalo, Rochester, Albany, and Syracuse. According to the FCC’s web page, the following counties are included within each of these MSAs:⁷

New York, NY: Includes NYC, Putnam, Rockland, Westchester, Nassau, and Suffolk counties.

Buffalo, NY: Includes Erie and Niagara counties.

Rochester, NY: Includes Livingston, Monroe, Ontario, Orleans, and Wayne counties.

Albany, NY: Includes Albany, Montgomery, Rensselaer, Saratoga, and Schenectady counties.

Syracuse, NY: Includes Madison, Onondaga, and Oswego counties.

⁵ *December 28, 2001 Order*, at p. 55.

⁶ *Id.*, at p. 8.

⁷ <http://wireless.fcc.gov/cellular/cellmkts.html>. The *December 28, 2001 Order* recognizes that the composition of the MSAs will change over time (at page 56). Therefore, relief granted under this Petition in the form of reconsideration or waiver would appropriately apply to all rural carriers operating in the top 100 MSAs as these MSAs are defined as of this filing and to any extent that they may change in the future.

Within these MSAs, the following providers operate and are defined as “rural telephone companies” under the Telecommunications Act of 1996:⁸

New York: Fishers Island Telephone Corp.

Buffalo: Citizens Telecommunications Company of New York

Rochester: Citizens Telecommunications Company of New York, Frontier Communications of Seneca-Gorham, Ogden Telephone Co., Ontario Telephone Co., and TDS Telecom -- Port Byron Telephone Co.

Albany: Citizens Telecommunications Company of New York, Pattersonville Telephone Co., and State Telephone Co.

Syracuse: Citizens Telecommunications Company of New York, TDS Telecom - Oriskany Falls Telephone Co., and TDS Telecom -- Vernon Telephone Co.

Accordingly, all of these carriers, which are members of NYSTA, are directly -- and negatively -- affected by the outcome of this decision. For the reasons that follow, NYSTA urges that the LNP and pooling requirements made applicable to rural carriers operating in the top 100 MSAs by the *December 28, 2001 Order* be rescinded as being unlawful and against the public interest. As a result, the LNP and pooling requirements found in § 52.23 of the FCC’s Rules, which mandate that a request for LNP be received by a carrier prior to this requirement becoming applicable, should continue in effect. In addition, the effectiveness of these requirements should be stayed pending final determination in this matter.

⁸ 47 USC § 153(37). All of these carriers provide local service to fewer than 50,000 access lines per study area and have 15 percent or less of their access lines in communities of 50,000 or more.

In the alternative, NYSTA requests that a waiver be granted regarding these requirements for the affected New York State rural carriers named above and in Attachment A.

I. THE APPLICABILITY OF THE LNP AND POOLING REQUIREMENTS TO RURAL CARRIERS OPERATING IN THE TOP 100 MSAs IS UNLAWFUL

The *December 28, 2001 Order* states that the FCC is seeking to:

clarify any uncertainty in our rules, we modify them herein. To the extent that wireline carriers in the top 100 MSAs may have misinterpreted these rules as requiring LNP capability only when they receive a request from a competing carrier, we give non-compliant carriers six months from the effective date of this order to become LNP capable in the top 100 MSAs.⁹

NYSTA does not believe there has been a misinterpretation by the affected carriers in the top 100 MSAs. In addition, the changes espoused in the *December 28, 2001 Order* are far from a clarification. In fact, the FCC's 1997 *First Memorandum Opinion and Order on Reconsideration*¹⁰ in its Telephone Number Portability proceeding and the text of its unchanged rules indicate a wholly different situation.

Specifically, the *March 11, 1997 Order* states:

we believe that limiting [LNP] deployment to switches in which a competitor expresses interest in number portability will address the concerns of smaller and rural LECs with end offices within the 100 largest MSAs that they may have to upgrade their networks at significant expense even if no competitors desire portability. . . . We therefore conclude that LECs need only provide number portability within the 100 largest MSAs

⁹ *December 28, 2001 Order*, at p. 55.

¹⁰ *In the Matter of Telephone Number Portability*, CC Docket No. 95-116 (released on March 11, 1997). (“*March 11, 1997 Order*”)

in switches for which another carrier has made a specific request for the provision of portability.¹¹

The Commission concluded by holding:

As set forth above, we grant the petitions to limit deployment of portability to those switches for which a competitor has expressed interest in deployment by concluding that LECs need only provide number portability within the 100 largest MSAs in switches for which another carrier has made a specific request for the provision of portability. We find that this modification to our rules should address the concerns of parties that urge us to waive number portability requirements for rural and/or smaller LECs serving areas in the largest 100 MSAs until receipt of a request.¹²

When § 52.23 of the FCC's Rules was amended on April 15, 1997 in response to this decision, it was done so to read as follows:

(b)(1) All LECs must provide a long-term database method for number portability in the 100 largest Metropolitan Statistical Areas (MSAs) by December 31, 1998, in accordance with the deployment schedule set forth in the Appendix to this part, in switches for which another carrier has made a specific request for the provision of number portability, subject to paragraph (b)(2) of this section.¹³

There are no provisions in the FCC's Rules that alter the requirement that a request must be made prior to LNP deployment.

¹¹ *Id.* at paragraphs 59 to 60.

¹² *Id.* at paragraph 113.

¹³ 47 CFR § 52.23(b)(1) (emphasis added). Paragraph (b)(2) of § 52.23 sets forth the criteria for which competing carriers can make requests, when requests for LNP deployment must be made, and the timetable for the incumbent to deploy LNP after the request is received.

Further, the *December 28, 2001 Order*, which claims to “clarify” that wireline carriers in the top 100 MSAs have been “misinterpreting” these rules as requiring LNP capability only when a request from a competing carrier is received, actually does not make any changes to § 52.23. As a result, § 52.23, which has been in effect since the original LNP Order in 1997 (and as quoted in relevant part above), has not changed, even though the text of the *December 28, 2001 Order* would appear to state otherwise.

Accordingly, there has been an attempt to alter the FCC’s Rule which protects rural carriers in the top 100 MSAs regarding LNP and pooling in the absence of a request. However, the actual rule text was never altered and no legal justification has been offered for the attempted change; rather, the decision merely attempts to couch it as a “clarification,” which does not overcome the shortcoming that the language of the rule has not been changed.

Moreover, the reasoning in the *December 28, 2001 Order* for not extending the requirements to carriers outside the top 100 MSAs is equally applicable to rural carriers operating within the top 100 MSAs. In pertinent part, the decision very cogently stated the reasons why it declined to extend these requirements to non-LNP capable carriers outside the top 100 MSAs that have not yet received a request:

There is insufficient evidence in the record to conclude that requiring these carriers to participate in pooling would result in significant numbering resource savings. Many of the carriers outside of the largest 100 MSAs operate in rate centers where there are few, if any, competing carriers. . . . [I]t would be unreasonable to require non-LNP capable carriers in these areas to establish pooling capability because they would have few, if any, carriers with which to pool. In addition, there is

insufficient evidence in the record for us to conclude that the non-LNP capable carriers operating outside of the largest 100 MSAs, viewed as a whole, hold significant amounts of numbering resources compared to carriers in larger metropolitan areas. Because these carriers hold relatively small amounts of numbering resources, there would be little benefit, at least from a nationwide perspective, to requiring them to participate in pooling. . . . For these reasons, we find that requiring these carriers to participate in pooling would not result in significant number optimization benefits.

. . . . Evidence from the record suggests that the per line cost to establish pooling capability would be significantly higher for small and rural carriers operating outside of the largest 100 MSAs than for carriers operating inside urban and metropolitan areas because of these carriers' limited customer bases. Additionally, some commenters predict that imposing these costs on smaller and rural carriers may delay efforts to bring advanced services to rural subscribers. Weighed against the limited number optimization benefits of requiring these carriers' participation in pooling, these costs appear to be unreasonably high.¹⁴

NYSTA stands squarely behind this analysis and can only add that being located in the top 100 MSAs does not alter the inherent nature of a rural carrier.

For example, the rural carrier Fishers Island Telephone Corporation serves a portion of Suffolk County, which is part of the New York, NY MSA. However, Fishers Island is an island with approximately 300 full-time residents some 120 miles east of Manhattan, but only three miles from the Connecticut shoreline. It is not affiliated with the New York Metro LATA and, thus, calls between the Island and New York City are InterLATA toll calls. Further, Fishers Island is served by ferry to and from New London, Connecticut with all of its off-island traffic routed to Connecticut. Although located within the top 100 MSAs, it is highly unlikely that Fishers Island Telephone Company will ever receive a request for LNP. Similarly, the other rural carriers in New York State

¹⁴ *December 28, 2001 Order*, at pages 10 to 11.

that happen to have portions of their service areas within the boundaries of a top 100 MSA are unlikely to need to become LNP capable.

Accordingly, the fact that the actual rule text has not been altered -- even though an *Errata* has been issued which made various unrelated amendments -- and the *December 28, 2001 Order* recognizes the negative impact the requirement would have on rural carriers, lends additional credence to NYSTA's position that there is no legal basis for the 180 degree change in pooling and LNP requirements for those rural carriers operating in the top 100 MSAs. All rural carriers have been granted the same protections under the Telecommunications Act, regardless of which MSA they happen to operate in.

II. THE APPLICABILITY OF THE LNP AND POOLING REQUIREMENTS TO RURAL CARRIERS OPERATING IN THE TOP 100 MSAs RUNS COUNTER TO THE PUBLIC INTEREST

In addition to these legal shortcomings in enacting this change in policy, the proposed action also runs counter to the public interest. Requiring rural carriers to invest in unnecessary system upgrades, and requiring their rural customers to pay for these increased network expenses, is contrary to the public interest and this Commission's stated goal of making affordable telecommunications services available to rural America.

As this Commission is aware, pooled numbers have value only to those carriers operating in the same exchange where the number block has been assigned. In the case of rural carriers, unless a rural exemption proceeding has been conducted by the state regulatory commission, the rural exemption struck down, and an interconnection

agreement has been negotiated between the rural carrier and competitor, the telephone numbers that a rural carrier would pool would only be available for itself. Similarly, unless these conditions precedent occur, there would be no carrier for an end user to have its telephone number ported to under an LNP regime. This is the reason for the requirement that a request must be received prior to the applicability of LNP and pooling to rural carriers regardless of what MSA they operate in. Such a logical conclusion still makes sense today.

There is little or no interest in the rural territories by competitors. In response to the 1997 FCC LNP decision, for example, the New York State Public Service Commission balloted competitive local exchange carriers (CLECs) as to which exchanges they would like to have LNP available. This information assisted in developing the LNP roll-out schedule. In the end, CLECs did not select any rural carrier exchanges for the official roll-out schedule.

To investigate the ramifications of the *December 28, 2001 Order*, NYSTA conducted an informal survey of its affected members. The costs to upgrade existing switches to provide LNP and pooling (the vast majority do not already have this generic upgrade in place), purchase the LNP and pooling software, and conduct the necessary translations would average over \$100,000 per company.¹⁵

¹⁵ A breakdown of the actual costs per affected company appears as Attachment B.

One hundred thousand dollars is a significant amount of money for rural, Independent telephone companies, especially when no party will benefit from the expense.

While the carrier which expends the money will be able to recoup some expenses through increased access charges for a limited period of time, this is designed to cover only a portion of the expenses.¹⁶

Further, an end user LNP surcharge has been permitted for the larger carriers where competition does exist. However, the NECA Tariff, which is subscribed to by all of the affected rural carriers in New York State, will only permit LNP recovery through an end user surcharge after a request is received from a competitor for LNP.¹⁷ It would be inherently unfair to not permit rural carriers to recover their costs via an end user surcharge but require them to invest in the equipment to provide LNP.

Also, competing carriers will not be able to benefit from the availability of pooled numbers nor be able to offer customers the ability to switch providers and keep their existing telephone number (as is the case in the territories of the largest carriers) because there will be no competing providers operating in the rural carrier's territory unless the conditions precedent occur.

¹⁶ *December 28, 2001 Order* at p. 13. A discussion of which factors are recoverable begins on page 16.

¹⁷ NECA Tariff FCC No. 5 § 13.14

For example, Pattersonville Telephone Company, a rural carrier which serves about 1,500 access lines in the Albany, NY MSA and is over 30 miles from Albany, would need to move up to a higher generic upgrade at a cost of \$35,000, purchase the LNP and pooling software packages at a cost of \$44,000, and make various billing and database administration upgrades (including translations) at a cost exceeding \$8,000 for its single switch and exchange. This amounts to a grand total of \$87,000 for a company which, to date, has its rural exemption in place and has not received a single request for interconnection or LNP from a competing carrier.

Further, as stated, even assuming that it could charge its customers an end user LNP surcharge to recoup some of these costs, its customers would not receive the benefit of being able to switch to a competing carrier, if they so choose. In addition, any blocks of numbers freed-up by becoming 1000s block pooling capable would not benefit other carriers because these numbers only have value in the Rotterdam Junction exchange.

Similarly, TDS Telecom -- Port Byron Telephone Co. has 1,100 customers in the Savannah exchange, which is part of the Rochester, NY MSA. It estimates a cost of \$98,000 for the required release upgrade, \$70,000 for the LNP software, \$24,000 for the pooling software, and an additional \$8,000 for translations. These costs total a combined \$200,000.

This scenario is repeated several times around the state by other Independents which have their rural exemption in place and have not received a request from a competing carrier, but happen to serve customers in the top 100 MSAs. Requiring these

carriers to go through the expense to provide LNP and pooling without any offsetting benefit for the public or competing carriers is a clear violation of the public interest.

III. IN THE ALTERNATIVE, SHOULD THE REQUESTED RELIEF NOT BE GRANTED, NYSTA URGES THE FCC TO WAIVE THE APPLICABILITY OF THESE REQUIREMENTS TO THE AFFECTED RURAL CARRIERS IN NEW YORK STATE

Under § 1.3 of the FCC's Rules, the Commission is free to waive the applicability of its requirements to certain providers when good cause is shown.¹⁸ Should NYSTA's Petition to continue to exempt rural carriers operating in the top 100 MSAs from the LNP and pooling requirements in the absence of a request not be granted, NYSTA believes good cause has been shown to waive this requirement for the affected rural carriers in New York State.

While the 10 companies cited in this Petition do provide service in the counties included within the affected MSAs, they all serve rural, low-population areas and are generally 30 miles or more from the city which names the particular MSA.

For example, TDS Telecom -- Oriskany Falls Telephone Company is over 35 miles east of Syracuse, serves little more than 700 customers, but happens to be located in Madison County which is included in the Syracuse, NY MSA. The Fishers Island Telephone Corp. situation in the New York, NY MSA has previously been discussed. Like all of the other carriers included in this Petition, both of these companies have their

¹⁸ 47 CFR § 1.3.

rural exemptions in place and have not received a request for LNP or interconnection from a competitor and no such request is expected.

There is no justification to treat these carriers any differently than other rural carriers that happen to operate in an adjacent county, and thus outside of the MSA boundaries. All of the New York State rural carriers are committed to embracing competition when it arrives; however, before the expense to become LNP and pooling capable can begin, the Telecommunications Act requires two events to occur first: a rural exemption evaluation by the state commission and an interconnection agreement must be negotiated.¹⁹ No justification has been presented to skip these required steps or to treat rural carriers in the top 100 MSAs any differently than rural carriers outside the top 100 MSAs.

Accordingly, should NYSTA's Petition on behalf of all rural carriers in the top 100 MSAs not be accepted, we urge that this requirement for the affected rural carriers in New York State be waived for good cause shown.

CONCLUSION

NYSTA appreciates the opportunity to present this Petition to the FCC. We hope the relief requested will be granted so that rural carriers serving portions of the top 100 MSAs will not need to become LNP and pooling capable prior to a request being

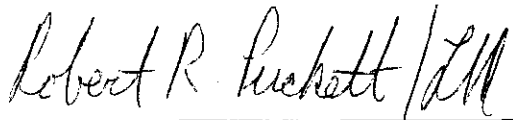
¹⁹ See: generally, 47 USC § 251(f).

received. We also request that the effectiveness of this portion of the decision be stayed pending final determination in this matter.

Further, should reconsideration not be granted, we hope that the LNP and pooling implementation requirement will be waived for the affected New York State rural carriers for good cause shown.

Respectfully submitted,

**NEW YORK STATE TELECOMMUNICATIONS
ASSOCIATION, INC.**

Handwritten signature of Robert R. Puckett in cursive script, followed by a horizontal line.

Robert R. Puckett, President

Handwritten signature of Louis Manuta in cursive script, followed by a horizontal line.

Louis Manuta, Esq.

100 State Street
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Albany, New York 12207
518-443-2700
518-443-2810 (FAX)

Dated: March 12, 2002

Attachment A

Rural Carriers in Affected MSAs *

New York, NY

Fishers Island Telephone Corp.

Buffalo, NY

Citizens Telecommunications Company of New York

Rochester, NY

Citizens Telecommunications Company of New York

Frontier Communications of Seneca-Gorham

Ogden Telephone Co.

Ontario Telephone Co.

TDS Telecom -- Port Byron Telephone Co.

Albany, NY

Citizens Telecommunications Company of New York

Pattersonville Telephone Co.

State Telephone Co.

Syracuse, NY

Citizens Telecommunications Company of New York

TDS Telecom -- Oriskany Falls Telephone Co.

TDS Telecom -- Vernon Telephone Co.

* The information regarding which counties are included in the affected MSAs has been derived from the FCC's web page (<http://wireless.fcc.gov/cellular/cellmkts.html>). The *December 28, 2001 Order* recognizes that the composition of the MSAs will change over time (at page 56). Therefore, relief granted under this Petition in the form of reconsideration or waiver would appropriately apply to all rural carriers operating in the top 100 MSAs as these MSAs are defined as of this filing and to any extent that they may change in the future.

Attachment B

Financial Implications for Affected Rural Carriers *

Carrier Name: Citizens Telecommunications Company of New York
MSA: Buffalo, NY; Rochester, NY; Albany, NY; Syracuse, NY
TOTAL Compliance Cost: \$814,384
Number of Access Lines: 850,927

Carrier Name: Fishers Island Telephone Corp.
MSA: New York, NY
TOTAL Compliance Cost: \$225,120
Number of Access Lines: 964

Carrier Name: Frontier Communications of Seneca-Gorham
MSA: Rochester, NY
TOTAL Compliance Cost: \$40,436
Number of Access Lines: 10,259

Carrier Name: Ogden Telephone Co.
MSA: Rochester, NY
TOTAL Compliance Cost: \$801,690
Number of Access Lines: 22,820

Carrier Name: Ontario Telephone Co.
MSA: Rochester, NY
TOTAL Compliance Cost: \$187,000
Number of Access Lines: 5,127

Carrier Name: Pattersonville Telephone Co.
MSA: Albany, NY
TOTAL Compliance Cost: \$87,000
Number of Access Lines: 1,415

Carrier Name: State Telephone Co.
MSA: Albany, NY
TOTAL Compliance Cost: \$135,780
Number of Access Lines: 8,672

Carrier Name: TDS Telecom -- Oriskany Falls Telephone Co.
MSA: Syracuse, NY
TOTAL Compliance Cost: N/A (Remote off of Vernon Telephone's switch)
Number of Access Lines: 711

Carrier Name: TDS Telecom -- Port Byron Telephone Co.
MSA: Rochester, NY
TOTAL Compliance Cost: \$200,000
Number of Access Lines: 3,472

Carrier Name: TDS Telecom -- Vernon Telephone Co.
MSA: Syracuse, NY
TOTAL Compliance Cost: \$43,000
Number of Access Lines: 2,751

* The information regarding which counties are included in the affected MSAs has been derived from the FCC's web page (<http://wireless.fcc.gov/cellular/cellmkts.html>). The *December 28, 2001 Order* recognizes that the composition of the MSAs will change over time (at page 56). Therefore, relief granted under this Petition in the form of reconsideration or waiver would appropriately apply to all rural carriers operating in the top 100 MSAs as these MSAs are defined as of this filing and to any extent that they may change in the future.